

## Decision

Dispute Codes: CNC

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?

### Background and Evidence

This tenancy began in 2005 when the residential property was managed by a different landlord. The current landlord assumed management of the property in 2006. The residential property is a 4-floor apartment building. The tenant originally lived on one of the lower floors, but at some point during the tenancy agreed to move into the current rental unit on the third floor as the landlord wanted the two lower floors to be non-smoking floors. On or about September 28 the tenant was served with a one-month notice to end tenancy (the "Notice"). The Notice alleges that:

1. The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
2. The tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
3. The tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord; and
4. The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant smokes marijuana in the rental unit and leaves the door of the rental unit open to the hallway, which permits the odour to permeate the

surrounding area. The landlord produced a letter signed by 7 staff members complaining about exposure to the heavy concentration of marijuana and tobacco smoke on the third floor. The landlord produced an employee as a witness who testified that she has observed the tenant and several guests smoking marijuana in the rental unit with the door open. The witness D.C. testified that on August 11 the police were in attendance at the residential property for another matter when they observed the tenant smoking marijuana. The witness testified that the tenant was unable to produce documentation to prove that she was permitted to smoke marijuana for medicinal purposes and the police warned her that she could be arrested if she persisted in smoking marijuana. The landlord testified that a number of other tenants have complained about the odour of marijuana as well. The landlord further testified that the tenant had been operating a business out of the rental unit, selling cigarettes. The tenant was advised that under the terms of her tenancy agreement she was not permitted to operate a business from the rental unit and that since that time she has continued selling cigarettes, but transactions now take place outside in front of a café next door. The landlord testified that she had received a number of complaints from other tenants that the tenant was harassing them and threatening them because they owed her money. The landlord further testified that the tenant has been given 5 letters which contained warnings that her actions would not be tolerated.

The tenant acknowledged that she smokes marijuana and argued that she is legally entitled to do so because she is a member of the BC Compassion Club Society, which provides medicinal marijuana to its members. The tenant further acknowledged that she occasionally opens the door from the rental unit into the hallway, but testified that she avoids doing so during business hours of 8:00 – 6:00, Monday through Thursday. The tenant testified that she did not want to keep the door closed all of the time because it made her feel like she was in a prison. The tenant acknowledged that at one time she operated a business out of the rental unit through which she sold cigarettes, but that approximately 5 months ago when the landlord asked her to stop and when she discovered it was illegal, she stopped. The tenant testified that since she stopped operating her business, she has only sold cigarettes a few times, for cash, in front of the café. The tenant testified that she merely sought to collect her debts and was not engaging in harassing behaviour. The tenant further testified that since she stopped accepting cigarette purchases on credit, she has not had to pursue creditors.

## Analysis

Of the four grounds listed on the Notice, I find that the landlord has proven two of the grounds, namely that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant was specifically advised that if she chose to smoke marijuana, she should ensure the door from the rental unit to the hallway was closed. I find that the tenant's choice to leave the door open at times caused smoke to drift from her unit into the hallway, where it had an effect upon other occupants and upon staff members. I do not accept the tenant's argument that the odour could have come from other rental units. There is no evidence before me that any other occupants of the building who used marijuana left their doors open while using marijuana and I accept that smoke and its odour can travel more freely through an open door than through a closed door. I note as well that in the letter of complaint signed by the staff members, the employees identify the open door of the tenant's unit as a specific concern. I accept the landlord's testimony that there are employees, such as the janitor, who have difficulty working on the third floor due to the volume of smoke. While the tenant may feel that she is in a prison when she closes the door, I note that because she lives in high density housing she has to expect that some of the freedoms she would enjoy in a single-family dwelling will be curtailed. I find that by leaving her door open while using marijuana, the tenant has seriously jeopardized the health or safety of other occupants and the landlord.

While the tenant argued that she is legally entitled to smoke marijuana for medicinal purposes, she did not provide evidence of that entitlement. I find that membership in the Compassion Club Society is not evidence of a legal entitlement to use marijuana. The fact that the police do not always enforce the law surrounding the use of marijuana does not render it a legal activity. I find that by smoking marijuana with the door of the rental unit open into the hallway, the tenant engaged in an illegal activity that adversely affected the quiet enjoyment of other occupants and the physical well-being of employees.

I find that the landlord has established grounds on which to end the tenancy and I

decline to set aside the notice to end tenancy. At the hearing the landlord indicated a determination to end the tenancy but expressed a willingness to grant the tenant additional time to vacate the rental unit. Pursuant to section 55(1) of the Act I grant the landlord an order of possession effective December 31, 2009. This order must be served on the tenant. If the tenant fails to comply with the order, it may be file in the Supreme Court and enforced as an order of that Court.

As I have found that the landlord has proven two of the four grounds of the Notice, I find it unnecessary to address the remaining two grounds.

### Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

Dated November 12, 2009.